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Supreme Court, U. S.
FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. .....

VETERANS AND RESERVISTS FOR PEACE IN VIETNAM,

Petitioner,

—against—

REGIONAL COMMISSIONER OF CUSTOMS, REGION II and SECRETARY OF THE TREASURY OF THE UNITED STATES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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REGIONAL COMMISSIONER OF CUSTOMS, REGION II and SECRETARY OF THE TREASURY OF THE UNITED STATES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered May 4, 1972.

Opinions Below

The opinions of the courts below have not been reported. The opinion of the district court is appended at page 20a and the opinion of the court of appeals is appended at page 7a.

Jurisdiction

The judgment sought to be reviewed was dated and entered May 4, 1972.

This Court has jurisdiction under 28 U.S.C. §1254(1).

Questions Presented for Review

1. Do the Foreign Assets Control Regulations, 31 C.F.R. Part 500, on their face and as applied, violate the First Amendment by prohibiting the receipt in the United States of unsolicited publications from China, North Korea and North Vietnam unless the addressee:

(a) undertakes the burden and suffers the delay of obtaining a license;

(b) submits for a permanent record his desire to receive publications from the proscribed countries; and

(c) assumes the burden of proving that he has made no payment?

2. Are the Foreign Assets Control Regulations, 31 C.F.R. Part 500, unconstitutional in granting, with no standard for its exercise, power to an administrative official to issue or deny licenses to receive unsolicited publications from China, North Korea and North Vietnam?

3. Are the Foreign Asset Control Regulations, 31 C.F.R. Part 500, authorized by 50 U.S.C. App. §5(b)?

4. If the Foreign Assets Control Regulations, 31 C.F.R. Part 500, are authorized by 50 U.S.C. App. §5(b), does that statute on its face and as applied violate the First and Fifth Amendments?

Constitutional Provisions, Statute and Regulations Involved

This case involves First and Fifth Amendments to the United States Constitution, and the Foreign Assets Control Regulations, 31 C.F.R. Part 500, promulgated by the Secretary of the Treasury under the authority of 50 U.S.C. App. 5(b). Pertinent portions of the statute and regulations are appended hereto at page 1a.

Statement of the Case[1]

Petitioner, an unincorporated association, received a notice from the Regional Commissioner of Customs, Region II, that material described as "(Booklet) Red Chinese Lit," sent to petitioner by mail from North Vietnam, had been detained and would be released only upon presentation of a license issued by Foreign Assets Control.[2]

The notice stated that application forms for such licenses could be obtained from the Foreign Assets Control Department, Federal Reserve Bank of New York, and that the detained mail would be returned to the sender in 45 days, but would be held an additional 45 days if the Regional Commissioner received a written communication that a license had been applied for.

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[1] The facts as stated herein are reflected in the opinion of the court of appeals which is found, *infra*, at p. 7a.

[2] Foreign Assets Control is an office in the Treasury Department which administers the Foreign Assets Control Regulations, 31 C.F.R. Part 500 ("Regulations"). The Regulations prohibit, unless licensed, every conceivable transaction involving North Vietnam and North Korea (and until recently, mainland China). A similar set of regulations is directed against Cuba, 31 C.F.R. Part 515.

The detained publications had been mailed to petitioner gratis and unsolicited. Subsequent inquiry disclosed that the publications consisted of copies of the "Vietnam Courier," an English language newspaper published in North Vietnam.

Petitioner, without applying for a license, commenced an action in the district court, seeking a declaratory judgment that the Regulations and 50 U.S.C. App. §5(b) ("Statute"), pursuant to which the Regulations were promulgated, were unconstitutional and also seeking injunctive relief. On cross motions for summary judgment the district court granted summary judgment to respondents, and the court of appeals affirmed.

Neither the notice of detention nor the application forms for licenses state the criteria or conditions for granting licenses, nor do they even indicate what the Regulations are or where they can be found. Two forms are available for license applications. These forms are included in the Appendix, *infra*, at pp. 24a *et seq.* One, TFAC-1, requires only the name, address, citizenship and nationality of the applicant and a description of the purpose of license sought. The other form, TFAC-4 is captioned "Application to import merchandise for non-commercial purposes" and consists of a two-page questionnaire relating to the applicant and the merchandise sought to be imported.

Because the detention involved unsolicited publications described incorrectly as "(Red) Chinese Lit.," and because petitioner had no knowledge that section 500.208 appendix item 108 of the Regulations authorizes the granting of licenses for publications if "the Office of Foreign Assets Control is satisfied that they are bona fide gifts," petitioner would have been unable to complete an application form

intelligibly except after correspondence to determine the nature of the detained material and the pertinent provision of the Regulations.

Reasons for Granting Writ

The decision of the court below, upholding the regulatory scheme by which the receipt of publications is made subject to licensing, runs contrary to four decades of unwavering decisions by this Court striking down prior restraints. See *Teague* v. *Regional Commissioner,* 394 U.S. 977 (1969) (Black and Douglas, JJ., dissenting from denial of certiorari). Whatever the limits of First Amendment doctine may be, the core of the constitutional protection is that no prior restraint may be imposed on speech or press. *Near* v. *Minnesota,* 283 U.S. 697 (1931). As recently as *New York Times Company* v. *United States,* 403 U.S. 713 (1971), this Court reiterated the rule that a heavy presumption of unconstitutionality faces any prior restraint.

It is no answer that the purpose of the licensing scheme is to promote a legitimate governmental interest, the prevention of economic benefit to the proscribed countries. It is indeed rare that a proper governmental interest cannot be found: the preservation of "secret" information, *New York Times Company* v. *United States, supra;* the prevention of violence, *Carroll* v. *Princess Anne,* 393 U.S. 175 (1968); the suppression of obscenity, *Freedman* v. *Maryland,* 380 U.S. 51 (1965).

The licensing scheme of the Regulations is particularly offensive: it imposes an impermissible burden on the recipient, it causes an undue delay in the delivery of protected publications, it requires the recipient to abandon his

anonymity in a sensitive political area, and it places the burden of proof upon the citizen to establish his right to read a newspaper.

A. *Burden and Delay.* In order to receive detained publications, the addressee must seek a license application form, complete it, mail it to the Federal Reserve Bank of New York, await a license, and then present the license to the Regional Commissioner of Customs. Because the publications in issue here were unsolicited, inquiry would also have to be made as to their nature. If, as is undoubtedly the case with the vast majority of addressees, they are unfamiliar with the Regulations, there would be further burden and delay in determining the crucial information that licenses will be issued for publications on proof that they are gifts. There is further delay while the application is processed. The court below expressed a view, supported by nothing in the record, that such delay would be inconsequential. In a similar case, *Teague* v. *Regional Commissioner,* 404 F.2d 441 (2d Cir. 1968), *cert. denied* 394 U.S. 977 (1969), the court concluded that Foreign Assets Control would process licenses in about ten days.

Because the publications are unsolicited, it will be indeed unlikely that any person will make the effort to apply for a license, any more than a citizen could be expected to apply for a license to receive a handbill if such a requirement could be imposed. Whatever the intent, the effect of the Regulations is exactly the same as a total prohibition.

This Court has consistently struck down legislation which imposes even modest delays on the exercise of First Amendment rights. *Freedman* v. *Maryland,* 380 U.S. 51

(1965); *Teitel Film Corp.* v. *Cusack,* 390 U.S. 139 (1968); *Carroll* v. *Princess Anne,* 393 U.S. 175 (1968). The court below suggested that administrative delay was tolerable because the agency considers only financial aspects of the transaction and not the content of the materials, *infra,* p. 17a. This distinction is unsupported by any authority. It would be shocking to relegate the detention of newspapers to a lower rung of the constitutional ladder than erotic films. See *Carroll* v. *Princess Anne, supra,* 393 U.S. at 182, where the Court ruled that the problem of timeliness is more acute in a case of "political" speech than it is in a case of erotic speech.

Lamont v. *Postmaster General,* 381 U.S. 301 (1965), which also dealt with the delivery of unsolicited publications, held flatly that a burden far less than required here—the checking of a box on a postage-free postcard—was an unconstitutional burden. The court below attempted to distinguish *Lamont* by relying on the statement in Mr. Justice Brennan's concurring opinion, 381 U.S. at 308-309, that in *Lamont* there was no compelling governmental interest in the regulatory scheme there in issue. But that statement was adopted by only two of the eight members of this Court who participated. The others declined to accept such a limitation.

B. *Loss of Anonymity.* Implicit in the licensing procedure is the maintaining of permanent files containing information about persons who have disclosed their wish for publications from what the court below referred to as the "enemy." The court below conceded the problem to be "troublesome," and went to the unusual length of indicating its wish that the records could be kept confidential.

Yet there is no assurance that any attempt is made to maintain secrecy, and in any case the records may be public within the meaning of the Freedom of Information Act, 5 U.S.C. §552(a)(2)(A). And they are undoubtedly subject to examination efforts by congressional committees and investigatory agencies.

The right to anonymity in political activity is fundamental. *Talley* v. *California,* 362 U.S. 60 (1960); *Zwickler* v. *Koota,* 389 U.S. 241 (1967); id., 290 F. Supp. 244 (E.D. N.Y. 1968), *reversed on other grounds sub nom. Zwickler* v. *Golden,* 394 U.S. 103 (1968); cf. *N.A.A.C.P.* v. *Alabama,* 357 U.S. 449 (1958). The passive recipient of publications is entitled to even greater protection than the publisher. Even if the likelihood of disclosure is not great, the fear of loss of anonymity is real, and is a deterrent to the exercise of fundamental rights. *Lamont* v. *Postmaster General, supra.*

C. *Burden of Proof.* The Regulations impose upon the applicant the burden of proving that the publications are in fact bona fide gifts. No such burden is permissible as a condition for the exercise of fundamental rights. *Speiser* v. *Randall,* 357 U.S. 513 (1958). This is a particularly compelling consideration because unlicensed payment for publications would be a felony. The Regulations require the citizen to prove he has not committed a crime.

The court below, in an exercise of wishful thinking, suggested that it should be sufficient if the applicant simply declare he has made no payment. At no time has the government indicated that Foreign Assets Control will accept such a statement, and the provision in the Regulations that Foreign Assets Control must be "satisfied" belies such a conclusion.

Where government action infringes upon basic rights, several factors must be considered. These include the nature of the governmental interest, the nature of the right infringed, and the availability of less drastic measures to achieve the same ends. *Shelton* v. *Tucker,* 364 U.S. 479 (1960); *Aptheker* v. *Rusk,* 378 U.S. 500, 512-514 (1964); *United States* v. *O'Brien,* 391 U.S. 367 (1968).

Whatever the governmental interest may be in restricting the flow of currency to North Vietnam and North Korea, it is patent that even completely unrestricted trade in films and publications would be *de minimis.* Thus there is no compelling necessity to impose a cumbersome licensing procedure on the importation of materials protected by the First Amendment.

But even if the government could establish that prohibition of payment for publications is essential, the end can be achieved by far less drastic means, utilizing the criminal penalties in the Statute.[3] Thus importation of publications could be permitted without restriction, but the making of any payment would remain a crime. Criminal sanctions are not, of course, a total deterrent, but they are deemed sufficient protection against a multitude of antisocial acts far more serious than the purchase of a Hanoi newspaper. If the threat of prosecution is an adequate sanction against treason, murder and larceny, there is no reasonable justification for a licensing requirement, in addition to severe criminal penalties, to prevent payment for North Vietnamese publications.

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[3] On the extent to which prior censorship, especially a pure administrative licensing scheme, is a more "drastic means" than subsequent criminal punishment, see, e.g., T. Emerson, *The System of Freedom of Expression,* p. 506 (1970); P. Freund, *The Supreme Court of the United States,* p. 66 (1968).

It is not necessary for petitioner to show that the regulation of importation of publications from North Vietnam is unreasonable. Where First Amendment rights are infringed the government bears the burden of justifying its acts. *N.A.A.C.P.* v. *Alabama,* 357 U.S. 449, 466 (1958); *Sherbert* v. *Verner,* 374 U.S. 398, 406-407 (1963).

It is not just the mechanics of the Regulations which offend the First Amendment. They suffer from the basic infirmity of lacking any standards by which Foreign Assets Control may determine whether or not to grant licenses. The Regulations grant power to the administrator to issue licenses for any reason whatever, and to deny a license to anyone who would be entitled to act under the provisions of one of the general exemptions contained in the Regulations. 31 C.F.R. §500.503. This would authorize Foreign Assets Control to deny a license for the importation of publications, even if it were proved that they were bona fide gifts. The Statute gives no hint of a congressional policy by which the administrator may be guided, for it simply permits limitless prohibition or regulation of transactions relating to "any property in which any foreign country or a national thereof has any interest."

The court below concluded that the Regulations were intended only to prevent economic benefit from flowing to the proscribed countries, despite the lack of any supporting language in the Regulations, the Statute or the enforcement history. It is well-established, however, that regulations which effect speech and press must be precisely and narrowly drawn and clearly authorized. *Schneider* v. *Smith,* 390 U.S. 17 (1968); *Shelton* v. *Tucker,* 364 U.S. 479 (1960); *Kent* v. *Dulles,* 357 U.S. 116 (1958). The Regulations, in their grant of uncontrolled discretion, do not meet

that test. And it is doubtful that they have been authorized by the Statute. But if the Regulations are within the scope permitted by the Statute, it, too, must fall.

The accepted approach to such a problem, ignored by the court below, is to construe the Statute to save it from unconstitutionality. See, e.g., *N.L.R.B.* v. *Fruit and Vegetable Packers, Local 760,* 377 U.S. 58 (1964). There can be little doubt that the Statute, and therefore the Regulations, was intended to regulate commercial transactions only, and that any infringement of First Amendment rights is beyond their reach. By so construing the Statute, no substantial aspect of the program would be impeded, and fundamental rights would be preserved.

CONCLUSION

For the reasons stated above, the petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX

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Statute and Regulations

50 U. S. C. App. §5(b), in pertinent part, provides:

(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States;

* * * * *

Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; * * *.

The pertinent provisions of the Foreign Assets Control Regulations, 31 C. F. R. Part 500. are:

§500.201 *Transactions involving designated foreign countries or their nationals; effective date.* (a) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if either such transactions are by, or on behalf of, or pursuant to the direction of any designated foreign country, or any national thereof, or such transactions involve property in which any designated foreign country, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

(1) All transfers of credit and all payments between, by, through, or to any banking institution or banking institutions wheresoever located, with respect to any property subject to the jurisdiction of the United States or by any person (including a banking institution) subject to the jurisdiction of the United States;

(2) All transactions in foreign exchange by any person within the United States; and

(3) The exportation or withdrawal from the United States of gold or silver coin or bullion, currency or securities, or the earmarking of any such property, by any person within the United States.

(b) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumen-

tality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if such transactions involve property in which any designated foreign country, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

(1) All dealings in, including, without limitation, transfers, withdrawals, or exportations of, any property or evidences of indebtedness or evidences of ownership of property by any person subject to the jurisdiction of the United States; and

All transfers outside the United States with regard to any property or property interest subject to the jurisdiction of the United States.

(c) Any transaction for the purpose or which has the effect of evading or avoiding any of the prohibitions set forth in paragraphs (a) or (b) of this section is hereby prohibited.

(d) The term "designated foreign country" means * * * [China, North Korea and North Viet-Nam.]

§500.204. (a) Except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, or rulings, instructions, licenses, or otherwise, no person subject to the jurisdiction of the United States may purchase, transport, import, or otherwise deal in or engage in any transaction with respect to any merchandise outside the United States if such merchandise is: (1) Merchandise the country of origin of which is China (except Formosa), North Korea, or North Viet-Nam. * * *

§500.204. Appendix.

(108) *Publications and films from China, North Korea and North Viet Nam.* Publications and films originating in mainland China, North Korea or North Viet Nam are licensed for commercial importation provided all payments due to the suppliers are made into blocked accounts. Publications and films originating in mainland China, North Korea, and North Viet Nam are also licensed without restrictions as to shipment or method of payment under programs approved by the Librarian of Congress or the National Science Foundation for universities, libraries, research and scientific institutions. Such publications and films are also licensed in exchange for publications from the United States. Additionally, such publications and films are licensed when the Office of Foreign Assets Control is satisfied that they are bona fide gifts to the importers and that there is not and has not been since the effective date any direct or indirect financial or commercial benefits to designated countries or nationals thereof from the importations.

§500.503. The Secretary of the Treasury reserves the right to exclude from the operation of any license or from the privileges therein conferred or to restrict the applicability thereof with respect to particular persons, transactions or property or classes thereof. Such action shall be binding upon all persons receiving actual notice or constructive notice thereof.

§500.801. (a) • • •

(b) *Specific licenses*—(1) *General course of procedure.* Transactions subject to the prohibitions con-

tained in Subpart B of this part which are not authorized by general license may be effected only under specific license. The specific licensing activities of Foreign Assets Control are performed by the central organization and the Federal Reserve Bank of New York. When an unusual problem is presented, the proposed action is cleared with the Director of Foreign Assets Control or such person as he may designate.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transaction prohibited by or pursuant to this chapter are to be filed in duplicate on Form TFAC-1 with the Federal Reserve Bank of New York. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing the effecting of such transaction, and there is no requirement that any other person having an interest in such transactions shall or should join in making or filing such application.

(3) *Information to be supplied.* Applicants must supply all information specified by the respective forms and instructions. Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Control. If an applicant or other party in interest desires to present additional information or discuss or argue the application, he may do so at any time before or after decision. Arrangements for oral presentation should be made with the Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition upon the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by Foreign Assets Control acting on behalf of the Secretary of the Treasury or by the Federal Reserve Bank of New York, acting in accordance with such regulations, rulings and instructions as the Secretary of the Treasury or Foreign Assets Control may from time to time prescribe, in such cases or classes of cases as the Secretary of the Treasury or Foreign Assets Control may determine, or licenses may be issued by the Secretary of the Treasury acting directly or through any person, agency, or instrumentality designated by him.

Opinion of the United States Court of Appeals, Third Circuit

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 71-1391

VETERANS AND RESERVISTS FOR PEACE IN VIETNAM,

Appellant,

—v.—

REGIONAL COMMISSIONER OF CUSTOMS, REGION II AND SECRETARY OF THE TREASURY OF THE UNITED STATES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Argued March 21, 1972

Before ADAMS, GIBBONS, HUNTER, *Circuit Judges*

OPINION OF THE COURT

(Filed May 4, 1972)

ADAMS, *Circuit Judge.*

Plaintiff has frontally assaulted the Trading with the Enemy Act, 50 U.S.C. 5(b)[1] and the Foreign Assets

[1] Section 5(b) authorizes the President, in time of war or national emergency, to regulate or prohibit transactions "involving

Control Regulations, 31 C.F.R. Part 500[2] as being unconstitutional facially and as applied in this case. The attack is essentially two-pronged: the statute and regulations establish an unconstitutional delegation of legislative power without adequate standards, and violate the First Amendment by prohibiting the receipt of unsolicited publications unless the addressee obtains a license, submits

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any property in which any foreign country or a national thereof has an interest." This authority was delegated to the Secretary of the Treasury in 1942. 7 Fed. Reg. 1409 (February 12, 1942); Executive Order 9693 (July 6, 1942). The Secretary, in turn, has delegated his authority to the Director of the Office of Foreign Assets Control. Treas. Dept. Order No. 120, December 19, 1950, as amended, 32 Fed. Reg. 3472.

This country is currently in a state of national emergency. This emergency was first declared by President Truman on December 16, 1950, and was reaffirmed by Proclamation 3004, 67 Stat. C31, January 17, 1953. Subsequent Presidents have recognized the continued existence of this national emergency. Executive Order No. 10896, 3 C.F.R. (November 29, 1960); Executive Order No. 10905, 3 C.F.R. (January 14, 1961); Executive Order No. 11037, 3 C.F.R. (July 24, 1962); Executive Order No. 11387, 33 Fed. Reg. 47 (January 1, 1968). *See* Sardino v. Federal Reserve Bank, 361 F.2d 106 (2d Cir.), *cert. denied*, 385 U.S. 898 (1966); Teague v. Regional Commissioner of Customs, 404 F.2d 441 (2d Cir. 1968), *cert. denied*, 394 U.S. 977 (1969); Neilson v. Secretary of the Treasury, 424 F.2d 833 (D.C. Cir. 1970).

[2] Section 500.204(a) of the Foreign Assets Control Regulations prohibits unauthorized dealings in merchandise originating in, *inter alia*, North Vietnam. Paragraph 108 of the Appendix to Section 500.204 provides for licenses for the importation of films and publications from North Vietnam, North Korea and Communist China where such films or publications are bona fide gifts not involving "any direct or indirect commercial benefit to [the] designated countries," where payments for such items are made into blocked accounts, or where such materials are sent to libraries, universities, etc., or where they are received in "exchange for publications from the United States."

Section 500.801(b) sets forth the licensing procedure, and Section 500.803 provides that the Office of Foreign Assets Control or the Federal Reserve Bank of New York will make final decisions respecting applications for licenses.

to a permanent record his desire to receive the proscribed publications, and proves he has made no payment.

The facts of this controversy are not in dispute. By letter dated February 17, 1970, plaintiff, an unincorporated association, received notice from the Regional Commissioner of Customs that a shipment of Red Chinese literature from North Vietnam had been detained and would not be released until a license had been obtained. Plaintiff alleges that the publications, copies of an English language newspaper, were unsolicited and that plaintiff had no intention of making payment to anyone for them. However, rather than apply for a license, plaintiff brought suit in the district court for injunctive relief and moved for summary judgment, or in the alternative, for a preliminary injunction and the formation for a three-judge court under 28 U.S.C. §§2282, 2284 (1970). Defendants cross moved for summary judgment, and their motion was granted. The district court relied on Teague v. Regional Commissioner of Customs, 404 F.2d 441 (2d Cir. 1968), *cert. denied,* 394 U.S. 977 (1969).[2a]

I

Plaintiff's first argument is that the statute unconstitutionally delegates legislative powers without appropriate

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[2a] The district court denied the alternative relief on the ground that a substantial constitutional question had not been presented in view of the following cases: Kaufman v. Societe Internationale, 343 U.S. 156 (1952); Propper v. Clark, 337 U.S. 472 (1949); United States v. China Daily News, 224 F.2d 670 (2d Cir.), *cert. denied,* 350 U.S. 885 (1955); United States v. Quong, 303 F.2d 499 (6th Cir.), *cert. denied,* 371 U.S. 863 (1962); Sardino v. Federal Reserve Bank, *supra,* Teague v. Regional Commissioner of Customs, *supra.* We agree with this conclusion of the district court, but because the facts here differ somewhat from those present in *Teague,* we deem it necessary to set forth our reasoning in this opinion.

standards. In support of this contention, plaintiff has traced the history of predecessor statutes from the original Trading with the Enemy Act of 1917, 40 Stat. 414, to demonstrate that the present statute "permits profoundly drastic action at the whim of the administrator" that "may be [utilized] to carry out" domestic economic policy.[3] The only restriction on this vast power, plaintiff asserts, is that it can be exercised solely in time of war or other national emergency declared by the President, and since a President's declaration of national emergency is unreviewable,[4] "the statute contains no limitations whatsoever." Therefore, according to plaintiff, the statutory grant of authority is repugnant to the Constitution, A.L.A. Schecter Poultry Corp. v. United States, 295 U.S. 485 (1935), especially where the overbreadth of the statute affects First Amendment rights. United States v. Robel, 389 U.S. 258 (1967).

We note that the statute contains two express limitations: (1) it becomes operative only during "the time of war" or "any other period of national emergency declared by the President," and (2) it applies only to "property in which any foreign country or a national thereof has any interest." Ordinarily, when dealing with matters of foreign relations, Congress may lawfully delegate to the President broader discretion than would be permissible with regard to domestic affairs. Zemel v. Rusk, 381 U.S. 1 (1965);

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[3] However, there is nothing in this case to indicate that the statute had been utilized other than in connection with foreign relations.

[4] *See* Teague v. Regional Commissioner of Customs, 404 F.2d 441 (2d Cir. 1968), *cert. denied*, 394 U.S. 977 (1969); Sardino v. Federal Reserve Bank, 361 F.2d 106 (2d Cir. 1966), *cert. denied*, 385 U.S. 898 (1968).

Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp., 333 U.S. 103 (1948); United States v. Curtiss-Wright Corp., 299 U.S. 304 (1936). Were the standards expressed in these cases the only criteria of relevance here, we would have no difficulty holding that the delegation does not render the statute unconstitutional, especially since the national emergency qualifies as a "time of crisis."

But the matter is not that simple. Clearly, items entitled to First Amendment protection may be encompassed within the definition of the term "property." When the operation of an otherwise valid law "clashes with those individual liberties protected by the Bill of Rights, it is our 'delicate and difficult task' to determine whether the resulting restrictions on freedom can be tolerated." United States v. Robel, 389 U.S. at 264. In deciding "whether Congress has adopted a constitutional means in achieving its concededly legitimate legislative goal" it is "necessary to measure the means adopted by Congress against both the goal it has sought to achieve and the specific prohibitions of the First Amendment." *Id.* at 268 n.20. Thus there are two essential criteria: (1) the legislative purpose must be legitimate, and (2) the means of achieving that purpose must not violate the First Amendment.

There is little doubt regarding the propriety of the purpose of the Trading with the Enemy Act. Its obvious goal is to prevent countries such as North Vietnam and Communist China from deriving any economic benefit from transactions with persons subject to the jurisdiction of the United States. Considering the state of our relationship with North Vietnam, and that money is an important weapon in any international struggle, we conclude that the Congressional design under-pinning the Act is wholly

proper. *See* Banco National de Cuba v. Sabbatino, 376 U.S. 398 (1964); Teague v. Regional Commissioner of Customs, *supra;* Sardino v. Federal Reserve Bank of New York, *supra.*

The question whether the means adopted by Congress to reach its goal—delegation of authority to promulgate regulations—comport with the First Amendment does not admit to facile solution. Most, if not all, of the authoritative Supreme Court cases dealing with this issue concern instances of delegation of authority where the function of the delegatee was to determine only whether certain materials were protected by the First Amendment. *See e.g.,* United States v. Thirty-Seven Photographs, 402 U.S. 363 (1971); Blount v. Rizzi, 400 U.S. 410 (1971); Interstate Circuit, Inc. v. Dallas, 390 U.S. 676 (1968); Teitel Film Corp. v. Cusack, 390 U.S. 139 (1968); Freedman v. Maryland, 380 U.S. 51 (1965).[5] However, none of those cases involved the precise problem confronting us: whether Congress may delegate authority to regulate so broad that the regulation of First Amendment protected rights incidentally falls within the ambit of the authority.

In other contexts, though, the Supreme Court has validated statutes and ordinances regulating various activities although such regulation incidentally curtailed First Amendment rights. In Valentine v. Chrestensen, 316 U.S. 52 (1942), the Supreme Court upheld an anti-littering ordinance directed against advertising handbills despite the fact that the handbills also contained materials pro-

[5] Similarly, in *Robel, supra,* the key to the decision was that the operative effect of the statute there invalidated depended upon "the exercise of an individual's right of association, which is protected by the provisions of the First Amendment." 389 U.S. at 263. (footnote omitted).

tected by the First Amendment.[6] And in American Communications Assn. v. Douds, 339 U.S. 382 (1950), the Supreme Court explained:

> "Those, who, so Congress has found, would subvert the public interest cannot escape all regulation because, at the same time, they carry on legitimate public activities." *Id.* at 412.

Adderly v. Florida, 385 U.S. 39 (1966), indicated that a state could nondiscriminately deny to demonstrators access to its property, provided such denial was "even-handed." *Id.* at 47-48.[7] An antipicketing statute was held valid and not overly broad in Cameron v. Johnson, 390 U.S. 611 (1968), since it did not prohibit picketing unless it obstructed or unreasonably interfered with ingress or egress to or from a courthouse, and there was no disclosure in the record that the officials had acted in bad faith or that the statute was enacted to halt the appellants' picketing.

The essence of these cases is that a statute is not overly broad and thus violative of the First Amendment merely because it regulates incident to its scheme protected activities or property. It is only where the statute *directly*

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[6] *See also,* Williamson v. Lee Optical Co., 348 U.S. 483 (1955). In that case, the Supreme Court upheld a statute which made it unlawful to solicit the sale of eyeglasses by use of the advertising media.

[7] *See also,* Kovacs v. Cooper, 336 U.S. 77 (1949), where the Supreme Court upheld an ordinance prohibiting the use of sound trucks in the public streets. Mr. Justice Frankfurter's concurring opinion stressed that the ordinance applied to the medium and not to the content of the message.

Cammarano v. United States, 358 U.S. 498 (1959) upheld, in the face of a First Amendment challenge, the validity of a treasury regulation applied so as to deny a deduction for ordinary and necessary business expense contributions to a lobbying organization.

regulates speech or expression arguably protected by the First Amendment, or where as its mechanism the statute has granted discretion to a delegatee to determine whether particular items of expression may be prohibited on the basis of their content, that the question of overbreadth arises. Section 5(b) does not directly regulate First Amendment protected material, rather it controls transactions concerning property in which an enemy has an economic interest. The purport of the statute is clear on its face, and therefore provides guidance to the delegatee with regard to the exercise of his functions. Were Section 5(b) applied by the President or his delegatee in such fashion that only First Amendment materials were excluded or regulated, we would have the power to construe that statute in a manner which would avoid the Constitutional defect. United States v. Thirty-Seven Photographs, 402 U.S. 363, 369 (1972). However, that case is not before us, and therefor we need not so interpret the legislation now.[8] Even if the Act were subject to an overly broad construction, such would not preclude its application "to prior conduct foreseeably within its valid sweep." *Id.* at 375 n.3.

II

Plaintiff next assails the statute and regulations with the charge that the regulatory scheme constitutes a prior restraint on its First Amendment freedoms. Here, using

[8] There is a serious question whether plaintiff has the standing necessary to raise the argument that the statute is void for overbreadth because it might be utilized only to restrict access to materials protected by the First Amendment. *See* Mr. Justice Harlan's concurring opinion in *Thirty-Seven Photographs*, 402 U.S. at 377-378, in which he further articulates the reasoning of the court in Section II of the majority opinion.

Lamont v. Postmaster General, 381 U.S. 301 (1965), as ammunition, plaintiff trains its weapons on the licensing procedure. This procedure, it is contended, encompasses all of the vices which rendered the statutory scheme at issue in *Lamont* invalid in that: (1) it imposes the burden on recipients of undertaking the affirmative act of completing a questionnaire and awaiting the delay of administrative process before the materials may be released; (2) it grants unlimited discretion to refuse licenses to the Office of Foreign Assets Control; (3) the filing of an application for a license results in a loss of anonymity because a permanent public record is thereby created; and (4) the procedure improperly places the burden of proof that a license is warranted upon the applicant.

But the *Lamont* case is not as broad as plaintiff asserts. As the concurring opinion points out:

> "[W]e 'have consistently held that only a compelling [governmental] interest in the regulation of a subject within [governmental] constitutional power to regulate can justify limiting First Amendment freedom.' *NAACP* v. *Button*, 371 U.S. 415, 438. The Government's brief expressly disavows any support for this statute 'in large public interests such as would be needed to justify a true restriction upon freedom of expression or inquiry.'" 381 U.S. at 308-309.

Here, as discussed in Section I, *supra*, the Government has a compelling interest in regulating the flow of money to certain countries. And because plaintiff has not alleged —indeed, with regard to the posture of the case as plaintiff fashioned it, could not allege—that the Office of Foreign Assets Control has acted in bad faith, we must assume that

the responsible officials will carry out their duties in accordance with constitutionally acceptable standards. It is in light of these factors that the licensing scheme must be evaluated.

A. Burden and Delay

In order to obtain a license, the applicant must submit either of two forms: TFAC-1 or TFAC-4. The first form applies solely to commercial importations, and since the importation here is not commercial, that form need not be further considered. Form TFAC-4, which applies to non-commercial importation, is rather brief. It requests only the following information: (1) the applicant's name, address and occupation; (2) the description and value of the merchandise; (3) the details of purchase, if the merchandise was purchased; (4) whether the applicant paid or intends to pay for the materials, and if so, how much and to whom; (5) if the merchandise was purchased or ordered, whether the applicant had knowledge of the Foreign Assets Control Regulations; (6) the use to be made of the materials; (7) whether the applicant has ever applied for such a license in the past. In view of the great importance in assuring that United States currency does not fall into the wrong hands, we do not believe that the burden imposed by answering the interrogatories on this form are unreasonable or excessive.

With regard to delay, we observe that the Notice of Detention contemplates 45 days, which may be extended to a maximum of ninety days. Because plaintiff did not request a license, we do not know exactly how long the administrative process takes, but if the Office of Foreign Assets Control expedites applications for licenses for materials protected by the First Amendment, it does not ap-

pear that this delay will be unduly burdensome. Because the administrative determinations go only to the factual questions regarding the financial aspects of the transaction and not to a decision based on the contents of the materials, this delay would not appear to be extraordinarily lengthy. *See Thirty-Seven Photographs,* 402 U.S. at 373.

B. Unlimited Discretion

It does not seem that the regulations vest unlimited discretion in the Government to deny a license. The whole thrust of the Act and regulations is to ensure that certain countries do not achieve economic benefit from transactions involving persons subject to the jurisdiction of the United States. If the Office of Foreign Assets Control attempted to apply any other standard, its actions might well be unconstitutional. *See* Kent v. Dulles, 357 U.S. 116 (1958), *cf.* United States v. Thirty-Seven Photographs, *supra;* Lamont v. Postmaster General, *supra.* But such a case is not now before us, and we hold here only that so long as the Government applies the standards implicit in the Act and regulations, the discretion vested in the Office of Foreign Assets Control is not so broad as to be unconstitutional.

C. Loss of Anonymity

We find troublesome the loss of anonymity accompanying the maintenance of records regarding the importation of First Amendment materials. *See Lamont, supra.* However, the necessity to maintain records of this sort appears to be an important adjunct to the adequate control and regulation of the flow of cash to certain countries. Such records enable the Office of Foreign Assets Control to check the prior importation of materials from the enumerated

countries by individual applicants, and perhaps facilitate the detection of patterns of conduct indicative of violations of the act. Where there is a need to regulate, it is essential to record the regulatory activity. We hesitate to invalidate such requirement without allegations or proof that the purpose of the recordation is to embarrass the recipient of materials or to chill the exercise of his right to receive them. Our disquietude would be considerably ameliorated if the Office of Foreign Assets Control would keep their records confidential so as to lessen the impact that may be caused by the retention of such documents.

D. Burden of Proof

The Notice of Detention received by plaintiff stated, with regard to license applications, that:

> "Such applications are, however, normally granted only if they are supported by clear and complete documentary proof of the non-Chinese origin of the merchandise affected by the Regulations. • • • It should be noted that the Foreign Assets Control does not regard statements of sellers or shippers (or documents based thereon) as affording a basis for issuing licenses."

Here, there is no dispute regarding the country of origin of the merchandise. Rather, in this case, the only inquiry which would be before the Office of Foreign Assets Control would be whether payment would be made, if at all, in such manner that the funds would be likely to be available to the listed countries. In this respect, and in the context of this case, Form TFAC-4 asks only: "Did the applicant pay or does he intend to pay for this merchandise, directly or indirectly • • • ?" The simple answer "No", followed

by the certification of truth printed on the form and the applicant's signature would satisfy the Act and regulations and thereby mandate that the materials be released, unless the Office of Foreign Assets Control possessed contrary information from another source. This duty does not appear to be excessively onerous, and in the absence of proof that a more convincing showing is required by the Government, we cannot hold that the burden is so high as to render the Act and regulations unconstitutional as applied.[9]

III

For the reasons stated in Sections I and II, we hold with regard to the facts of this case that Section 5(b) of the Trading with the Enemy Act and Part 500 of the Foreign Assets Control Regulations are Constitutional both facially and as applied.

Accordingly, the order of the district court will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

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[9] Had the plaintiff applied for a license, and in such application, answered the question in the negative, and were such application then denied, with or without a hearing or statement of reasons, we would be faced with different Constitutional questions that we need not now resolve.

Opinion of the United States District Court, Eastern District of Pennsylvania

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 70-1598

VETERANS AND RESERVISTS FOR PEACE IN VIETNAM,

—v.—

REGIONAL COMMISSIONER OF CUSTOMS, REGION II AND SECRETARY OF THE TREASURY OF THE UNITED STATES.

MEMORANDUM OPINION

WEINER, J. February 2, 1971

In this case court proceedings were launched against the defendant arising out of the following facts. On February 17, 1970, the Regional Commissioner of Customs notified the plaintiff that a package containing printed matter, published in and forwarded from North Vietnam, was being detained and would not be released and delivered unless plaintiff applied for and procured a license from Foreign Assets Control. The Commissioner relied on the Trading with the Enemy Act §5(b) 50 U.S.C. App. (1964) and the regulation 31 C.F.R. §500.808 (1968) promulgated thereunder.

The plaintiff, thereupon, brought this action seeking injunctive relief on the ground that the Statute and Regula-

tion are repugnant to the Constitution of the United States. We now have for our consideration counter motions for summary judgment together with the plaintiff's request for the appointment of a three-judge court.

This case presents a fact situation identical in all material respects to that present in *Teague* v. *Regional Commissioner of Customs, Region II*, 404 F.2d 441 (1968), cert. denied, 385 U.S. 898 (1966). The Court's analysis of the legislative history and the state of the law on this subject is persuasive and need not be reiterated here. We are in complete accord and believe that the closing words of that opinion are worth repeating.

"The Supreme Court has recently said:

> This Court has held that when 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms. To characterize the quality of the governmental interest which must appear, the Court has employed a variety of descriptive terms: compelling; substantial; subordinating; paramount; cogent; strong. Whatever imprecision inheres in these terms, we think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedom is no greater than is essential to the furtherance of that interest." *United States* v. *O'Brien*, 391 U.S. 367, 376-377, 88 S.Ct. 1673, 1678, 20 L.Ed.2d 672 (1968).

> "Applying the Supreme Court's test here we conclude that the infringement of first amendment freedoms is permissible as incidental to the proper, important, and substantial general purpose of the regulations." 404 F.2d at 446.

Additionally the plaintiff has moved for the convening of a three-judge court pursuant to 28 U.S.C. §§2282 and 2284. To justify the convening of a three-judge court the constitutional issues raised must be substantial. "The lack of substantiality in a federal question may appear either because it is without merit or because its unsoundness so clearly results from previous decisions of the Supreme Court as to foreclose the subject." *California Water Service Co.* v. *City of Redding, California,* 304 U.S. 252, 255, 58 S.Ct. 865, 82 L.Ed. 1321 (1938). Thus if the plaintiff's challenge to the Constitutionality of the Statute, i.e., the Trading with the Enemy Act, would be a decision of first impression, we would conclude that the request for the appointment of a three-judge court would be warranted. However, in a long line of decisions the constitutionality of the Statute in the case sub judice has been upheld. See: *Kaufman* v. *Societe Internationale,* 343 U.S. 156 (1952); *Zittman* v. *McGrath,* 341 U.S. 471 (1951); *Propper* v. *Clark,* 337 U.S. 472 (1949); (World War II era controls). Cf. *United States* v. *China Daily News,* 224 F.2d 670 (2d Cir. 1955) cert. denied 350 U.S. 885 (1955); *United States* v. *Quong,* 303 F.2d 499 (6th Cir. 1962) cert. denied 371 U.S. 863 (1962); (Korean conflict); *Sardino* v. *Federal Reserve Bank,* 361 F.2d 106 (2d Cir. 1966) cert. denied 385 U.S. 898 (1966); *Teague* v. *Regional Commissioner of Customs, Region II,* supra (Vietnam). It appears apparent that the constitutionality of the Statute has been well established.

The restrictions placed upon us by prior decisions leaves no recourse in this Court other than to deny the request for the convening of a three-judge court to rule upon the constitutionality of a regulation adopted pursuant to an Act of Congress. This obligation rests upon a single judge. *Jameson & Co.* v. *Morgenthau*, 307 U.S. 171 (1939).

ORDER

The plaintiff's motions for summary judgment and the convening of a three-Judge Court are DENIED.

The defendant's motion for summary judgment is GRANTED.

IT IS SO ORDERED.

CHARLES P. WEINER,
J.

Form TF-NC-1
Treasury Department
Foreign Assets Control

Application No. _____
(For Treasury Use Only)

PLEASE PRINT OR TYPE

APPLICATION FOR A LICENSE *

(To be executed and filed IN DUPLICATE with Federal Reserve Bank of New York, Foreign Assets Control Division, 33 Liberty Street, New York, New York 10045.) Attachments to applications, including any correspondence, should also be submitted IN DUPLICATE.

TO THE SECRETARY OF THE TREASURY
c/o Federal Reserve Bank of New York
Foreign Assets Control Division
33 Liberty Street
New York, N. Y. 10045

Date _____

Sir:

In accordance with Chapter V, Subtitle B, of Title 31 of the Code of Federal Regulations, the undersigned hereby applies for a license to execute the transaction described below:

A. (1) The name of the applicant is _____

(2) Applicant resides at or, in the case of a corporation, partnership, association or other organization, has its principal place of business at :

_____
(Street) (City) (State) (ZIP Code No.) (Country)

(3) Applicant is and has been a citizen of _____

since _____
(Month) (Day) (Year)

(4) The nationality under Chapter V, Subtitle B, of Title 31 of the Code of Federal Regulations ** of the applicant is _____

(5) Since _____ the applicant has been engaged in the business of _____
(State nature of business)

B. The applicant desires a license in order to:

(State in detail the nature, purpose and amount of the transaction, and the name, address, nationality under Chapter V, Subtitle B of Title 31 of the Code of Federal Regulations ** and extent of interest of every person, including the applicant, involved or interested in the transaction.)

Applicant's No.

* All definitions appearing in Chapter V, Subtitle B of Title 31 of the Code of Federal Regulations shall apply to the terms employed herein.

** In the case of a corporation, partnership, or association, give country in which organized and indicate the approximate percentage of stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of such organization owned or controlled, directly or indirectly, by designated nationals.

C. The applicant represents and warrants that, except as specifically stated below, no person other than those mentioned in item B above has any interest, direct or indirect, in the transaction or transactions for which a license is applied for herein.

D. The applicant represents and warrants that, except as specifically stated, he has personal knowledge of all the facts herein stated; that the same are correct and true; and that he does not have knowledge of any material fact in connection with such application which is not fully and accurately set forth herein.

E. The applicant represents and warrants that he has complied, and agrees that he will comply, in all respects, with all provisions of section 3(a) of the Trading with the enemy Act, as amended, and all regulations, rulings, orders and instructions issued by the Secretary of the Treasury thereunder or under the authority of section 5(b) of the Trading with the enemy Act, as amended, and with any and all licenses issued to the applicant pursuant thereto.

F. The applicant represents and warrants that no other application for a license authorizing the transaction here involved has been filed or is pending, except as follows:

_____
(Signature of Applicant)

(If this application is filed by an agent, attorney, or other person, for or on behalf of the applicant, the following statement should be executed.)

I, _____, certify that I am the _____
(State relationship to applicant)
of _____ who is the applicant in the above application for a license;
(Name of Applicant)

that I am duly authorized to make the foregoing application on behalf of the applicant; that, except as otherwise specifically stated, I have personal knowledge of all the facts herein stated; that the same are true and correct; and that I do not have knowledge of any material facts in connection with said application which are not fully and accurately set forth herein.

_____
(Signature of Agent)

_____
(Address)

RECOMMENDATION OF FEDERAL RESERVE BANK

The above application is forwarded to the Secretary of the Treasury with the recommendation that a license should be (granted) (denied).

Remarks: _____

NOTE: If this application is executed outside of the United States, it must be executed under oath before a diplomatic or consular officer of the United States.

Attention is directed to Title 18 U.S.C. Section 1001, which provides:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Copies of this form may be obtained at any Federal Reserve Bank or from the Foreign Assets Control, Treasury Department, Washington, D. C.

PLEASE PRINT OR TYPE

FORM TFAC-4 (Rev. 4)
Treasury Department
Foreign Assets Control

Application No. _____
(For Treasury Use Only)

APPLICATION TO IMPORT MERCHANDISE FOR NON-COMMERCIAL PURPOSES

This form should be executed and filed in duplicate with Foreign Assets Control, Federal Reserve Bank of New York, 33 Liberty Street, New York, N. Y. 10045. USE FORM TFAC-1 FOR COMMERCIAL IMPORTATIONS. Copies of Forms TFAC-1 and TFAC-4 may be obtained from any Federal Reserve Bank or from the Foreign Assets Control, Treasury Department, Washington, D. C. 20220.

TO THE SECRETARY OF THE TREASURY
c/o Federal Reserve Bank of New York

Date _____

Sir:

In accordance with the Foreign Assets Control Regulations (Chapter V, Subtitle B, of Title 31 of the Code of Federal Regulations), the undersigned hereby applies for a license authorizing the importation or release from Customs custody of the merchandise described below.

1. Applicant's:

   (a) Name _____

   (b) Address _____
   (Street) (City) (State) (ZIP Code)

   (c) Occupation _____

2. (a) Describe the merchandise and give its present location. (If Customs notice of detention received, submit copy). _____

   _____

   _____

   (b) What is the US dollar value of the merchandise? _____

3. (a) Where was merchandise purchased? _____

   _____

   (b) Name and address of purchaser. _____

   (c) Was merchandise purchased during foreign travel? _____

(Over)

(d) Was merchandise ordered by mail? If so, from whom? _____

_____

(e) Name and address of seller. If unknown, name and address of shipper of merchandise. _____

_____

4. Did the applicant pay or does he intend to pay for this merchandise, directly or indirectly, and if so when, how and how much? _____

_____

5. If the merchandise was purchased or ordered by the applicant, what knowledge of the Foreign Assets Control Regulations did the applicant have at the time the merchandise was purchased or ordered? _____

_____

6. What use will be made of this merchandise? (Personal use, resale, etc.) _____

_____

7. Has the applicant or any member of his immediate family ever applied for a Foreign Assets Control license? If so, give, with respect to each application, its number and date, and the name of the applicant. _____

_____

I certify that the above statements are true to the best of my knowledge and belief.

_____
(Applicant's Signature)

NOTE: If the space on this form is inadequate for you to state any required information, it should be set forth on a page, or pages, securely attached to this form.

Attention is directed to Title 18 U. S. C. Section 1001, which provides:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."